

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JIMMIE LEWIS,

Plaintiff,

V.

C.A. No. 04-1350-GMS

DR. SYLVIA FOSTER, STAFF
MEMBERS, THE DELAWARE
PSYCHIATRIC CENTER and
MR. GREY,

Defendants.

**DEFENDANT DELAWARE PSYCHIATRIC CENTER'S
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
ITS MOTION TO DISMISS PURSUANT TO RULES 12(b)(1) AND
12(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

- 1) Plaintiff has filed this action against The Delaware Psychiatric Center alleging violations of 42 U.S.C. § 1983, which provides that

“[e]very person who, under color of any statute, ordinance, regulation, custom or usage, of any State . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured. . . .”

- 2) The Delaware Psychiatric Center is an agency of the State of Delaware. *Gann v. Delaware State Hospital*, 543 F. Supp. 286, 271 (D. Del. 1982).

- 4) It is well established that a State agency is not a “person” under 42 U.S.C. § 1983. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989), *Church v. Department of Correction*, No. 00-085-SLR, 2002 WL 31927434, at *4 (D. Del, Dec. 18, 2002).

- 5) Since the only grounds asserted by plaintiff for this Court's jurisdiction over moving defendant is 42 U.S.C. § 1983, this Court has no jurisdiction over it and, under Fed. R. Civ. P. 12(b)(1), this action must be dismissed as to it.

- 6) Moreover, even if moving defendant were subject to liability pursuant to § 1983, plaintiff

has failed to state a claim for which relief could be granted under that statute since he makes no allegation that he was deprived of constitutionally or statutorily protected rights; at most, his complaint alleges acts which may be construed as torts under State law.

WHEREFORE, moving defendant respectfully requests this Honorable Court to dismiss the action against it for lack of jurisdiction and failure to state a claim for which relief might be granted.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Phebe S. Young
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Psychiatric Center

DATE: August 5, 2005

CERTIFICATE OF SERVICE

The undersigned certifies that on August 5, 2005, she electronically filed the attached Memorandum in Support of Motion to Dismiss with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Cynthia G. Beam, Esq., #2565
Reger Rizzo Kavulich & Darnell, LLP
1001 Jefferson Plaza, Suite 202
Wilmington, DE 19801

and that she caused two copies of the document to be mailed by United States Postal Service to the following non-registered participant:

Jimmie Lewis
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